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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,269	01/02/2004	Jonathan M. Katz	VIT.P0029	1735
7590 11/22/2005			EXAMINER	
Edward G. Greive Renner, Kenner, Greive, Bobak, Taylor & Weber First National Tower Fourth Floor Akron, OH 44308-1456			KIM, CHRISTOPHER S	
			ART UNIT	PAPER NUMBER
			3752	
DATE MAILED: 11/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/750,269	Applicant(s) KATZ ET AL.	
	Examiner Christopher S. Kim	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6,9,10,12-23,26,27 and 31-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,9,10,12-23,26,27 and 31-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The response filed September 12, 2005 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 20-23, 26, 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure, as originally filed, does not appear to disclose "a seal having a face the majority but not all of which is received on said shelf." The specification does not appear to disclose that not all of a face of the seal is received on a shelf. The specification does disclose, on page 5, lines 16-19, "It should also be noted that a vast majority of the surface of washer seal 42 is received on shelf 41. Thus, at least eighty percent, and preferably about ninety percent, of the surface of seal 42 is received on shelf 41." There is no explicit disclosure that prohibits

a seal having a face all of which is received on the self, i.e. an explicit exclusionary disclosure. It is recommended that applicant amend the claim to recite the narrower range, "majority but not all," without using negative language.

Claim Rejections - 35 USC § 102

5. Claims 1, 2, 7, 10, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Benson et al. (2,570,909).

Regarding claims 1, 2 and 7, Benson discloses a device comprising: a tube 5; a spray head 20; a plunger having a nose 19 and a base 17 having a rim 18; a seal 22; a spring 12.

Regarding claims 10, 13 and 14, Benson discloses a device comprising: a tube 5; a spray head 20; a plunger having a nose 19 and a base 17 having a rim 18; a first seal (the seal between rim 18 and gasket 22); a spring 12; at least one rib 23; a second seal (seal between spray head 20 and face 26 and seal between tube 5 and face 25).

It is noted that the claims recite "the other end." Such recitation is not limited to a particular end or an opposite end. Any other end, such as a top end, bottom end, front end, back end, right end, left end, inner end, outer end, etc., would constitute "the other end."

6. Claims 10, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Marty et al. (4,562,960).

Marty discloses a device comprising: a tube 14; a spray head 12, 16, 18; a plunger 70 having a nose 73 and a base 58 having a rim 66; a seal 22; a second seal 49; aperture 38; spray apertures (between vanes 34).

Claim Rejections - 35 USC § 103

7. Claims 1, 2, 14, 17, 20, 21, 25, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenkranz (3,006,560) in view of Marty et al. (4,562,960) or Bricker et al. (4,697,610).

Rosenkranz discloses a device comprising: a tube 11; a spray head 14; a plunger having a nose 32 and a base 34, 13, 36 having a rim 35; a seal 17; a spring 37; shelf 16; a hose (column 2, lines 10-11); an aperture 15. Rosenkranz does not disclose the spray head 14 having at least one rib to press into the other side of the seal 17.

Marty discloses a rib 47 to provide a leakproof connection against seal 49.

Briker discloses a rib 55a to prevent leakage.

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the rib of Marty or Briker to the shelf 16 of Rosenkranz to provide a leakproof connection.

Regarding claims 17 and 18, Rosenkranz in view of Marty discloses the limitations of the claimed invention with the exception of the nose being received over the stem. The stem 32 and nose 33 of Rosenkranz are integral. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a nose which is received over the stem, since it has been held that

forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

8. Claims 6, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenkranz (3,006,560) in view of Marty et al. (4,562,960) or Bricker et al. (4,697,610), and further in view of Schwaderer et al. (5,238,221).

Rosenkranz in view of Marty or Bricker discloses the limitations of the claimed invention with the exception of the device at the other end of the hose. Schwaderer discloses a device having a button 31, valve 13 and spring 17. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the device of Schwaderer to the hose of Rosenkranz in view of Marty or Bricker for plug in coupling.

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marty et al. (4,562,960).

Marty discloses the limitations of the claimed invention with the exception of the nose being received over the stem. Marty discloses a one piece nose 73 and stem 70. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a nose over the stem in the device of Marty for assembly/disassembly, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

10. Claims 31 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmour (2,536,167) in view of Schwaderer et al. (5,238,221).

Gilmour discloses the limitations of the claimed invention with the exception of the connecting device. Schwaderer discloses a connecting device having a button 31, valve 13 and spring 17. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the connecting device of Schwaderer to the hose of Gilmour for plug in coupling.

11. Claims 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vita-Mix Corporation (IDS, Other Document #2) in view of Schwaderer et al. (5,238,221).

Vita-Mix Corporation discloses the limitations of the claimed invention with the exception of the connecting device. Schwaderer discloses a connecting device having a button 31, valve 13 and spring 17. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the connecting device of Schwaderer to the hose of Vita-Mix Corporation for plug in coupling.

Response to Arguments

12. Applicant's arguments filed September 12, 2005 have been fully considered but they are not persuasive.

Applicant argues that the references do not show the nose of the plunger out of the spray head. In Benson, the portion of stem 19 which protrudes beyond bore 21 is out of spray head 20. In Rosenkranz, the nose 33 which protrudes beyond bore 15 is

out of spray head 14. The claim does not define "out of" said spray head and does not preclude what is shown by Benson or Rosenkranz. The recessed portion of into which nose 19 of Benson and nose 33 of Rosendranz has been considered to constitute outside of the spray head. For example, an alcove or a recessed portion of a building structure is arguably outside the building structure.

Applicant argues that Benson does not disclose a rib opposite the claim rim. Applicant's argument is not commensurate in scope with the claimed invention.

Applicant argues that claim 17 requires more that the nose be made of two pieces, that the nose is hollow and can slip onto the stem. Such a two part construction is known in that art and would have been obvious when constructing what was integral into two elements. Barton (2,621,076) is provided as evidence. Barton discloses a valve needle stem which is constructed of multiple parts which includes both a hollow recess and a stem. See construction of element 23 and stem 7.

Applicant argues that Benson discloses only one gasket 22. Benson provides one gasket 22 that provides two seals.

Applicant argues that the seal 49 of Marty is not between the tube 14 and spray head 12. Elements 12, 16 and 18 constitute the spray head of Marty.

Applicant argues that Marty does not disclose a top surface with an opening and adjacent spray openings. The down stream end of element 16 constitutes the tops surface which has spray apertures (between vanes 34).

Applicant argues that Schwaderer has no operating button. Applicant provides no argument why housing 31 cannot be considered a button. Housing 31 is pushed in

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against sleeve 1 to release stem 21. Housing 31 acts as a pushbutton. The claim limitation does not appear to preclude the housing 31 being a pushbutton.

Conclusion


13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim
Primary Examiner
Art Unit 3752

CK